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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Contemporary Forms
of Slavery

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Item 3 (b) and (c) of the provisional agenda

STATUS AND FOLLOW-UP OF THE CONVENTIONS ON SLAVERY AND SLAVERY-LIKE PRACTICES: REVIEW OF REPORTS AND INFORMATION RECEIVED ON THE STATUS AND IMPLEMENTATION OF CONVENTIONS; REVIEW OF NATIONAL LEGISLATION

Report of the Secretary-General pursuant to paragraphs 19 and 20 of Sub-Commission resolution 1992/2

ESTONIA

[Original: ENGLISH]
[15 February 1993]

Estonia advises that it has adhered to the following three conventions regarding slavery:

(a) International Agreement for the Suppression of the White Slave Traffic, concluded in Paris on 18 May 1904. Entered into force in Estonia on 15 October 1930;

(b) International Convention for the Suppression of the White Slave Traffic, concluded in Paris on 4 May 1910. Entered into force in Estonia on 15 October 1930;

(c) Slavery Convention, concluded in Geneva on 25 September 1926. Entered into force in Estonia on 18 May 1929.

PHILIPPINES

[Original: ENGLISH]
[23 March 1993]

1. On the matter of child labour, this concern has been addressed as early as 1974 by the Government. Under the Labour Code of the Philippines, working children have been given adequate protection, as follows:

"Art. 139 Minimum employable age

"(a) No child below fifteen (15) years of age shall be employed, except when he works directly under the sole responsibility of his parents or guardian, and his employment does not in any way interfere with his schooling.

"(b) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labour in appropriate regulations.

"(c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labour.

"Art. 140 Prohibition against child discriminations

"No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age."

2. Rule XI, sections 2 and 3 of Presidential Decree No. 442 subsequently modified the foregoing, viz:

"Section 2. Employable age - children below fifteen (15) years of age may be allowed to work under the direct responsibility of their parents or guardians in any non-hazardous undertaking where the work will not in any way interfere with their schooling. In such cases, the children shall not be considered as employees of the employer of their parents or guardian. Any person of either sex, between 15 and 18 years of age, may be employed in any non-hazardous work. No employer shall discriminate against such person in regard to terms and conditions of employment on account of his age.

"For purposes of this Rule, a non-hazardous work or undertaking shall mean any work or activity in which the employee is not exposed to any risk which constitutes an imminent danger to his safety and health. The Secretary of Labour shall from time to time publish a list of hazardous work and activities in which persons below 18 years of age cannot be employed."

3. These provisions were further modified and strengthened under the Republic Act No. 7610 of 17 June 1992.

SOUTH AFRICA

[Original: ENGLISH]
[26 March 1993]

Information provided by the Department of Manpower

1. As far as labour legislation as such is concerned, the Department of Manpower administers, inter alia, the Labour Relations Act, 1956, the Basic Conditions of Employment Act, 1983 and the Wage Act, 1957.

2. The objects of the Labour Relations Act, 1956, are the registration and orderly administration of trade unions, employers' organizations and industrial councils, the prevention and settlement of disputes between employers and employees, and the regulation of conditions of employment by way of arbitration, mediation, agreements and orders. The Industrial Court and the Labour Appeal Court are both instruments established in terms of the Act to adjudicate on matters arising from labour disputes between employers and employees.

3. The Basic Conditions of Employment Act provides for basic conditions of employment for all workers in the private and local government sectors that fall outside the scope of the Labour Relations Act and the Wage Act (excluding farm workers, employees of private households and employees of the State). As far as farm workers are concerned, an amendment of the Basic Conditions of Employment Act for the inclusion of these workers within the ambit of the Basic Conditions of Employment Act, 1983, was passed by Parliament and published in July 1992. It is expected, however, that the Amendment Act will in all probability come into force during the first quarter of 1993. The Basic Conditions of Employment Amendment Act to extend the conditions of the Basic Conditions of Employment Act to domestic workers was published on 24 December 1992 for general comment.

4. As far as the Wage Act is concerned, the objects of this Act are the establishment of a Wage Board and the determination of minimum wages and other conditions of employment for employees who are not sufficiently organized to make effective use of the negotiation mechanisms of the Labour Relations Act. The Wage Act does not apply to farm workers, employees in private households or the State. A draft Amendment Bill was, however, published on 24 December 1992 with the object of inviting interested parties to comment on a proposed amendment of the Wage Act to empower the Wage Board to undertake an investigation into the farming industry with a view to determining wage guidelines. These guidelines will take the special circumstances that prevail in the agricultural sector into consideration.

5. A draft Amendment Bill, regarding a proposed amendment of the Labour Relations Act to make provision for dispute settlement procedures and ancillary matters in the farming industry, was published on 31 December 1992, inviting comments thereon from interested parties. Final Amendment Bills in regard to the amendments concerning the Wage Act and the Labour Relations Act will be submitted by the Department of Manpower to Parliament after comments received have been processed.

6. Concerning legislation to govern labour relations in the public sector, a Public Service Relations Bill (B13-93) was recently introduced in Parliament by the Minister for Administration and Tourism and is receiving consideration.

7. As regards your request for general comment regarding contemporary forms of slavery, the Department's views are the following.

8. Contemporary forms of slavery, as envisaged by the Sub-Commission, can occur in many ways. In the labour field it can only take place in an environment where the absence of suitable labour legislation could lead to such practices.

9. Except for the absence of labour legislation for farm and domestic workers and employees of the State, a matter which is seriously being addressed now, the extent of labour legislation in the Republic of South Africa, as described in preceding paragraphs, is of such a nature and covers such a wide terrain of the South African labour field, that the enforcement of these laws would prevent the occurrence of these malpractices.

10. The Publications Act, 1974 (Act No. 42 of 1974) makes provision for the control of certain publications or objects, films and public entertainment and also provides for conditions and restrictions, such as age limits, which may be imposed before such publications may be viewed (see, for example, section 21).

11. The South African Defence Force employs youths from the age of 16 years in the permanent force. All white male youths are compelled to register for national service in their sixteenth year. Registration and training are optional for other race groups. These youths are given one year's basic training but their service time is postponed upon application for any number of reasons, mainly for study purposes.

12. From television and other media coverage it would appear as if so-called "private political armies" in this country and neighbouring States do train and coerce children to commit acts of violence and to fight but these acts are unofficial and are usually denied by all concerned.

13. South African labour law has, since its inception, prohibited the employment of youth under the age of 15 years, which is in line with ILO and international standards in this regard, preventing the misuse of children in any field of operation covered by the Republic of South Africa labour legislation.

14. The extent to which efforts are at present being made to include farm and domestic workers and employees of the State to participate in the climate of protection by legislation will ensure that no employee would be induced to offer services in an environment of suppression or restriction.

15. Farm labour has, for quite some time now, been under intense scrutiny from the international community, as well as from certain local organizations. Farmers were severely criticized for practices which developed over the years and which were to a certain extent misconstrued because of the circumstances

which prevailed in this industry over some time. Organized farmers therefore realize that their credibility in this regard is under suspicion and the only way to save face is to create positive changes in practices developed previously.

16. To this end, farmers have participated regularly with the Department and organized labour in discussions, in an effort to address the question of basic conditions of employment for farm workers. Although the Basic Conditions of Employment Amendment Act concerning the agricultural sector has, as indicated, been published, and will in all probability come into operation this year, farmers are of the opinion that a separate act for agriculture would be more viable. As a side issue, organized farming is therefore endeavouring to draw up a separate act for agriculture. By participating in this effort, farmers are indicating that they accept that labour legislation, in respect of their workers, is inevitable.

Information provided by the Department of National Health and Population Development

17. The Child Care Act, 1983 (Act No. 74 of 1983) prohibits the use of child labour (section 52A) and serves as a safeguard against the unlawful removal of children or child abuse (see sections 10 and 50 to 52). The sale of children is illegal in this country and very rare.

18. The Human Tissue Act, 1983 (Act No. 65 of 1983) controls the use of human tissue by the medical profession and effectively prevents the sale of children for this purpose.

19. The Sexual Offences Act, 1957 (Act No. 23 of 1957) protects children from prostitution and abduction (see sections 9 to 14) whilst the Criminal Procedures Act, 1977 (Act No. 51 of 1977) provides for the death penalty for kidnapping and rape of children (see section 277).

20. The importation of slaves was illegal as from 1807 and all slaves in this country were emancipated in 1834.

Information provided by the South African Police

1. The sale of children

21. Although no specific legislation exists which prohibits the sale of children per se, the following statutory provisions are relevant:

(a) The Child Care Act, No. 74 of 1983. Section 10 prohibits a person other than the manager of a maternity home, a hospital, a place of safety or a children's home to receive a child and maintain him/her apart from his/her parents for a period longer than 14 days, unless such a person has applied for the adoption of the child (in terms of section 18 of the Act), or has obtained the written consent of the Commissioner of Child Welfare. Section 24 prohibits any person, save with the consent of the Minister, to give, undertake to give, receive or contract to receive any consideration, in cash or kind, in respect of the adoption of a child. Any person who contravenes this section shall be guilty of an offence and on conviction be liable to a

fine not exceeding R8,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment. Section 50 determines that any parent or guardian or any person having custody of a child who abandons such a child shall be guilty of an offence. Any person who ill-treats a child shall also be guilty of an offence. A person convicted of contravening this section shall be liable to a fine not exceeding R20,000 or to imprisonment not exceeding five years or to both such fine and imprisonment;

(b) The Children's Status Act, No. 82 of 1987. The Children's Status Act is, inter alia, concerned with the protection of a minors interest and makes provisions for:

(i) The guardianship and custody of extramarital children (section 3);

(ii) The effects of artificial insemination (section 5);

(iii) The status of children of voidable marriages (section 6);

(iv) Safeguarding the interests of the minor children of voidable marriages (section 7).

From the abovementioned it would seem as if it is the intention of the legislature that children can only be transferred with the intervention of an independent and impartial statutory institution. Although a parent or guardian who sells his or her child will contravene some or other statutory provision, it is desirable that specific legislation with more severe penalties be enacted in order to supplement existing legislation.

22. In terms of the South African Law of Contract moral values and the interests of the community are taken into account. A contract contrary to these requirements is invalid and therefore not enforced. In Shepstone v Shepstone 1974 (2) SA 462 (N) the court ruled that:

> "the court will refuse to allow enforcement of a claim arising from a transaction which is based in the sense that it violates morality or runs counter 'to the fundamental principle on which our common society has been built up', especially if it concerns or affects minor children".

23. Furthermore, South African law has, notwithstanding the Roman law acceptance that slaves may be bought and sold, reached such a stage of development that a human being could never be considered an object and thus capable of sale.

24. Furthermore, the Supreme Court of South Africa remains the supreme guardian of all minor children.

2. Child prostitution

25. With regard to child prostitution, the Sexual Offences Act, No. 23 of 1957 as amended, prohibits any action relating to the sexual exploitation of a child.

26. In terms of section 9 of the Act any parent or guardian of any child under the age of 18 years who permits, procures or attempts to procure such a child to commit any immoral or indecent act, or to reside in or to frequent a brothel, or orders or permits or receives any consideration for the defilement, seduction or prostitution of such a child, shall be guilty of an offence. The legislature has further created a presumption that any parent or guardian shall be deemed to have assisted in bringing about that prostitution if he has knowingly permitted his child to consort with, or to continue in the employ of, a prostitute or a person with an immoral reputation.

27. Section 10 prohibits procuration. It determines that any person who entices any female to a brothel for the purpose of prostitution shall be guilty of an offence.

28. The interests of minors are specifically protected in section 14. Any male who has unlawful carnal intercourse with a girl under the age of 16 years or commits an immoral or indecent act with a boy or a girl under the age of 19 years shall be guilty of an offence. Any female who has unlawful carnal intercourse with a boy under the age of 16 years or commits an immoral or indecent act with a boy or with a girl under the age of 19 years shall be guilty of an offence. Any person who solicits or entices such a boy or girl to the commission of an immoral or indecent act, shall also be guilty of an offence.

29. Section 20 prohibits any person to live on earnings derived from prostitution.

30. From a private law point of view you are referred to the matter of Sasfin (Pty) Ltd v Beukes 1989 (1) SA 1 (A) where the court ruled that:

> "Agreements which are clearly inimical to the interest of the community, whether they are contrary to the law or morality, or run counter to social or economic expedience, will accordingly, on the grounds of public policy, not be enforced."

Accordingly, any agreement resulting in prostitution will not only be invalid but unenforceable as well.

3. Child pornography

31. Although child pornography per se is not specifically prohibited, legislation in the form of The Sexual Offences Act (supra), The Publications Act 1974 (Act 42 of 1974) and The Indecent or Obscene Photographic Matter Act 1967 (Act 37 of 1967) do exist.

(a) The Indecent or Obscene Photographic Matter Act. Section 2 prohibits the possession of any indecent or obscene photographic matter. Indecent or obscene photographic matter include photographic matter or any part thereof depicting, displaying, exhibiting, manifesting, portraying or representing sexual intercourse, licentiousness, lust, homosexuality, lesbianism, masturbation, sexual assault, rape, sodomy, masochism, sadism, bestiality or anything of a like nature;

(b) The Publications Act. Section 8 prohibits the production, distribution, importation and possession of certain publications or objects. In terms of section 19 no person may exhibit or publish any film unless such film has been approved by a committee. Section 26 determines that a committee shall not approve a film which is in its opinion undesirable. According to section 30, a committee may prohibit the giving of certain public entertainment or may impose conditions on such public entertainment. A committee shall, in its opinion decide whether the giving of that entertainment or any part thereof is or will be undesirable. For the purposes of the Act any publication, object, film, public entertainment or intended public entertainment shall be deemed to be undesirable if it, or any part thereof, among others, is indecent or obscene or is offensive or harmful to public morals.

Information provided by the Department of Justice

32. With the exception of sections 9, 13 and 14 of the Sexual Offences Act, 1957 (Act No. 23 of 1957), the Act is not exclusively aimed at the protection of youths but at protection against immorality and indecency in general. All the offences are nevertheless also applicable to youths. This includes offences such as unlawful sexual intercourse, conspiracy to obtain sexual intercourse, indecent sexual activity, homosexual offences, unnatural sexual offences, prostitution in general and soliciting.

33. The Child Care Act, 1983 (Act 74 of 1983) makes provision for the protection of children who are in danger of being harmfully affected by malpractices. It also provides for the intervention by social workers in such cases. The Act prohibits consideration in cash or kind in respect of the adoption of children. At present, a departmental workgroup is investigating all aspects of adoptions, including possible illegal practices concerning giving or receiving consideration for babies during the adoption process. The Act also makes provision for the protection of children who are or may be harmfully affected by such malpractices as child prostitution and child pornography. However, these are criminal offences, which are dealt with by the legal system and this Department therefore does not have any further information in this regard.

(Copies of the Sexual Offences Act No. 23 of 1957, the Child Care Act No. 74 of 1983, the Human Tissue Act No. 65 of 1983, the Criminal Procedure Act No. 51 of 1977, the Publication Act No. 42 of 1974 are available upon request.)

SUDAN

[Original: ENGLISH]
[28 January 1993]

The Sudanese Government acceded to the Slavery Convention of 1926 on 15 September 1927 only six months after it came into force on 9 March 1927. Sudan was not then an independent State. However, according to the principles of international law the Sudanese Government declared on Independence Day 1956 that it was bound by the rules of this Convention. The Sudan acceded to the Slavery Convention as amended by the Protocol on 9 September 1957. The Sudan also signed and ratified the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery in September 1956.

YUGOSLAVIA

[Original: ENGLISH]
[11 March 1993]

1. Yugoslavia ratified the Slavery Convention of 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 in 1958. In addition, it ratified the High Seas Convention prohibiting the transportation of enslaved persons in 1965.

2. Until 1990, the Criminal Code of the Serbian Federal Republic of Yugoslavia, in compliance with the Slavery Convention, penalized as an offence common slavery. Article 155 of this Code stipulated that he who enslaves another or traffics in enslaved persons or encourages others to sell their freedom or the freedom of their dependants shall be punished with imprisonment ranging from 1 to 10 years.

3. Paragraph 2 of the Code complying with the prohibition of the transportation of enslaved persons provided for a prison sentence of six months to five years for a person transporting enslaved persons from one country to another.

4. In view of article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, ratified by Yugoslavia, which defines as slavery-like practices debt bondage, serfdom, sale of a female person by her family for the purpose of marriage and delivery of minor children by their parents, article 155 of the federal Code was modified in 1990 to conform to the Supplementary Convention.

5. In addition to penalties for classic forms of slavery, the Criminal code of the Federal Republic of Yugoslavia now in force also penalizes institutions and practices similar to slavery as defined in article 1 of the Convention. Article 155, paragraph 1, provides that a sentence of between 1 and 10 years in prison may be pronounced against a person who, in violation of the rules of international law, enslaves another person or puts him/her in a similar relationship or maintains such relationship, or against a person who buys or sells or hands over enslaved persons or mediates the purchase or sale or handover of enslaved persons, or who encourages another person to sell his/her

freedom or the freedom of a person supported or looked after by him/her. Under paragraph 2 of this article the transportation from one country to another of enslaved persons or persons put in similar bondage may be punished by imprisonment from six months to five years.

6. If the offences under paragraphs 1 and 2 above are committed against a minor, imprisonment of at least five years may be imposed, implying that the Yugoslav criminal legislation provides for the gravest criminal offences imprisonment of up to 15 years, i.e. the severest penal sanction.

7. As regards the number of persons indicted or convicted of such offences in the Federal Republic of Yugoslavia, there were no reported cases in 1990. In 1991, four persons were reported and indicted in the Republic of Montenegro on criminal charges under article 155, paragraph 1. Since 1992 statistics are to be published in June 1993, we do not have any information on the completion of criminal proceedings against these individuals.

8. In view of the foregoing, it should be stressed in conclusion that Yugoslavia has ratified all international instruments prohibiting the establishment of, and keeping of persons in, bondage as well as those prohibiting institutions and practices similar to slavery, and has, accordingly, introduced appropriate penalties in its domestic criminal legislation.

9. On 30 November 1932, Yugoslavia ratified the Convention on Forced Labour (No. 29) of the International Labour Organisation adopted in 1930 (Official Gazette, No. 297-CX, 1932).